IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

LPA No. 48 of 2005

in

Writ Petition No. 2ll3 of 2004

Shri Dattatraya Govind Sane and ors.appellants

vs

Shri Mihir Yadunath Thatte & ors. respondents

Mr P.S.Dani with S S Gokhale for appellants

Mr. D.N.Nalawade for respondent nos.l to 4

Mr. Kirit Hakani for respondent nos. 4 to 8

CORAM;A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 6.7.2005

P.C.

. Heard advocates.

l. The respondent no 7 is a bank registered under the Maharashtra Coop Societies Act, l960 (MCS Act). It appears that due to various complaints against the functioning of the respondent no. 7 bank, the Reserve Bank of India had carried out an inspection

of the said bank under section 35 of the Banking Regulations Act, l949 for the period ending 3l.l2.2002 and had classified the bank as "weak" considering the highly unsatisfactory financial position of the bank and placed the said bank on the rehabilitation programme with usual restrictions of its functioning. The Cooperative Department had also conducted inspection of the said bank under section 8lA of the MCS Act with reference to the financial position as on 3l.3.2003 and had high lighted following irregularities viz:

(i) The bank has allowed deposits and has sanctioned loans against benami deposits.

ii) The cheque discounting facilities worth Rs.3.90 crores given to one M/s Runwal Multi Housing Pvt Ltd was without authority.The director of the said firm Pradeep Amrut Ruinwal, is son in law of the then existing chairman. The cheques were returned dishonoured and an amount of Rs.3.90 crores was unauthorisedly used by the said firm.

iii) In many cases, loans were sanctioned against directives laid by RBI.

iv) The bank has recorded loss continuously for last 2 years.

v) The loans over dues have increased drastically from Rs.l878.47 lacs to Rs.2764.0l lacs.

vi) The statutory audit for the year 2002-2003 has been completed and bank has been allotted "C" class.

vii) For the year ending 3l.l.200l the RBI has declared the said bank as weak vide its letter dated 6.3.2002.

(emphasis supplied)

2. In the light of the inspection carried out by the RBI and the report of the Inspecting Officer of the Coop Department, the Commissioner for Cooperation vide order dated 26.9.2003 superseded the board of directors of the bank and appointed an Administrator under section ll0A(iii) of the MCS Act.

3. In the meantime the Commissioner for

Cooperation had on l4.l2.200l issued an order under section 88 of the MCS Act to investigate various cases of cash, credit/loans sanctioned by the board of directors of the bank which have resulted into huge financial losses to the bank and further to find out the persons responsible for these malpractice and acts of embezzlement, and for recovering these financial loses as per the facts and factors contained in the Schedule A of the said order as per the said report submitted by the District Special Auditor (Grade I) on l5.ll.200l. It may be mentioned that audit was conducted by Dr. R.S.Wani,Auditor (Grade I) for the period l.4.2000 to 3l.3.200l and it has come to notice that there have been many malpractices and acts of embezzlement and serious lapses which have subjected the respondent bank to great financial loss. In order to fix the responsibility on the concerned persons and to recover the said amounts from these persons, Shri Prakash Kamble Asst Registrar Coop Societies Khed Dist Pune has been appointed as authorized officer, to ascertain the extent of monetary loss suffered by the bank and also to ascertain the persons responsible for the said loss and the extent of amount to be recovered from the said persons as per the Schedule A annexed

to the order dated l4.l2.200l.

4. Immediately after the notices were issued under section 88 the respondent no.7 bank approach the Minister by filing appeal and the Minister admitted the appeal and granted interim stay on 27.l2.200l.It appears that the respondent nos. l to 4 who are also shareholders of the bank made number of representations to the State Government seeking personal hearing in the aforesaid appeal and to vacate the interim order but no response was given to the said representations. Ultimately the Minister by his order dated l7.l0.2003 allowed the appeal and quashed and set aside the order dated l4.l2.200l under section 88 with liberty to initiate fresh proceedings in future in case of default in the recovery of the amounts involved in misappropriation and cheque discounting facilities. The Minister observed in his order dated l7.l0.2003 that since respondent bank had lodged police case against the agent and the manager involved in misappropriation there would be loss of the bank only if the misappropriation amount or part thereof remains unrecovered. As regards the other charges of unsecured advances and cheque discounting facilities,the Minister observed that since

respondent bank has filed recovery suits and the same are subjudice there would be loss only if the decreed amounts become unrecoverable. The Minister further observed that proceedings under section 88 would amount to duplication of remedies as the bank has already taken remedial measures to recover the said amounts.

5. Aggrieved by the order of the Minister the respondent nos.l to 4 have filed Writ Petition No.2ll3 of 2004. By the impugned order the learned single Judge has stayed the order of the Minister and directed the Commissioner to proceed with the inquiry so as to fix the individual liability under section 88 of the MCS Act as per the Rules and by following the principles of natural justice and complete the said inquiry within three months. The order of the learned single Judge is challenged by the appellants who are erstwhile directors of the bank.

6. We have heard the learned counsel appearing for the parties. We do not find any merit in the appeal. In our opinion the learned single Judge has rightly directed the authorities to proceed with the inquiry so as to fix the individual

liability under section 88 of the Act. The object of section 88 is to secure the recovery of the assets of the society, misapplied or wrongfully retained by an office-bearer of the society; and also to authorise levy of compensation from the office-bearers of the society for any damage due to mis-feasance or breach of trust. The inquiry cannot be deferred indefinitely till the conclusion of the various proceedings taken by the bank for recovery of its dues. Section 88 casts a duty on the Registrar to investigate into the instances of mis-feasances or breach of trust by the office-bearer. The learned single Judge was, therefore right in directing the authorities to proceed with the inquiry expeditiously . We make it clear that this court has not expressed any opinion as far as the liability of the erstwhile directors and other persons is concerned. They would be entitled to agitate all the contentions available in law before the authorities.

. Appeal is dismissed with costs. The Enquiry Officer is directed to complete the inquiry expeditiously and preferably within three months as directed by the learned single Judge.

. In view of the disposal of the main appeal no orders on the civil application.

. The learned counsel for the appellants seeks continuation of the interim stay. Application is rejected.